

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | | |
|------------------------------|---|--------------------------|
| MARSHALL LAND COMPANY LLC |) | CASE NO. |
| |) | |
| Plaintiff |) | JUDGE |
| |) | |
| vs. |) | NOTICE OF REMOVAL |
| |) | |
| AUTO-OWNERS MUTUAL INSURANCE |) | |
| COMPANY dba AUTO-OWNERS |) | |
| INSURANCE COMPANY |) | |
| |) | |
| Defendant |) | |
| |) | |
| |) | |

Now comes Defendant Auto-Owners Mutual Insurance Company dba Auto-Owners Insurance Company (“Auto-Owners”), by and through counsel, and pursuant to 28 U.S.C. § 1332, § 1441 (a) and (b) and § 1446, with full reservation of defenses, hereby removes this action from the Stark County Court of Common Pleas to the United States District Court for the Northern District of Ohio, Eastern Division. In support of this Notice of Removal, Auto-Owners states the following:

I. BACKGROUND

1. On or about July 22, 2020, Plaintiff Marshall Land Company LLC filed a Complaint, commencing this action in the Stark County, Ohio Court of Common Pleas, Case No. 2020CV01045 (“the Complaint”). A true and accurate copy of the Summons and Complaint is attached hereto as Exhibit A.

2. According to the docket maintained by the Stark County Court of Common Pleas, Exhibit A constitutes all process, pleadings and orders served on Auto-Owners in the state court action and, therefore, this Notice of Removal complies with 28 U.S.C. ¶ 1446(a). A true and accurate copy of the Stark County, Ohio Court of Common Pleas docket for the case, as of August 20, 2020, is attached hereto as Exhibit B.

3. This action stems from a related dispute that was litigated in *Marshall Land Company, LLC v. B-2 Sons, LLC, et al.*, Stark County Court of Common Pleas Case No. 2018 CV 01948 (“the related litigation”).

4. In the related litigation, Plaintiff prosecuted claims against B-2 Sons, LLC (“B-2”) and Christian A. Barth (“Barth”), for replevin and conversion, related to B-2 and Barth’s repossession and, after a reported redemption payment, alleged wrongful possession of a tractor (aka truck), trailer, excavator and skid-steer (collectively, “the equipment”).

5. Plaintiff successfully obtained a judgment against B-2 and Barth in the related litigation, for money damages on the conversion claim, as it relates to the tractor, trailer and excavator, as well as an order of replevin, for return of the skid-steer. (See Judgment Entry, Exhibit 3 to Complaint).

6. In the Judgment Entry, the court in the related litigation awarded Plaintiff a total of \$121,400.00 in compensatory damages, plus interest, punitive damages in the amount of \$15,000.00, attorney’s fees and costs in the amount of \$20,748.00 (total judgment of \$157,148.00) and the costs of the related action. (*Id.*).

7. B-2 and Barth reportedly returned the skid-steer to Plaintiff, but allegedly never paid Plaintiff any portion of the judgment against them.

8. In this action, Plaintiff seeks insurance coverage in an amount equal to the judgment it obtained against B-2 and Barth, pursuant to two policies of insurance that Auto-Owners issued to Plaintiff, a Commercial Auto Policy (Exhibit 1 to Complaint) and a Tailored Protection Policy (Exhibit 2 to Complaint. *See* Complaint, generally).

II. BASIS FOR JURISDICTION

9. Pursuant to 28 U.S.C. § 1332(a)(1) jurisdiction is appropriate in this case as the parties are citizens of different states. Further, the amount in controversy in this matter exceeds \$75,000. “A civil case is properly removed under §1441(b) where there is complete

diversity of the parties at the time of removal, meaning that ‘all parties on one side of the litigation are of a different citizenship from all parties on the other side of the litigation.’” *Kent State Univ. Bd. of Trs. v. Lexington Ins. Co.*, 512 Fed. Appx. 485, 489 (6th Cir. 2013), internal citations omitted.

10. Specifically, Auto-Owners is a citizen of the State of Michigan, while Plaintiff is a citizen of the State of Ohio.

11. The amount in controversy, as per Plaintiff’s Complaint, is the full amount of Plaintiff’s claimed losses to the truck, trailer and excavator, which is equal to the judgment of at least \$157,148.00 awarded to Plaintiff in the related litigation, as previously described in paragraph 6, above. Based upon the foregoing, the amount in controversy is in excess of \$75,000.00.

III. NOTICE GIVEN

12. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be promptly served on Plaintiff and a time-stamped copy will be promptly filed with the Clerk of Courts of the Stark County Court of Common Pleas, in Case No. 2020CV01045.

IV. REMOVAL IS TIMELY

13. This Notice of Removal is being timely filed within thirty days of July 28, 2020, the date on which Auto-Owners was served with Plaintiff’s Complaint. *See* Exhibit B.

V. VENUE

14. Pursuant to 28 U.S.C. § 1441(a), venue is proper in the United States District Court for the Northern District of Ohio, Eastern Division, because it is in the district and division embracing the state court in which this action was commenced.

VI. NON-WAIVER OF DEFENSES

15. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of Auto-Owners' right to assert any affirmative defenses to this matter, including, without limitation, motions to dismiss pursuant to Rule 12 of the Federal Rules of Civil Procedure.

VII. CONCLUSION

WHEREFORE, this Court has jurisdiction pursuant to 28 U.S.C. § 1332(a), based upon the diversity of citizenship between Plaintiff and Auto-Owners, and removal pursuant to 28 U.S.C. § 1441(a) and 1446 is appropriate.

Dated: August 20, 2020

Respectfully submitted,

/s/ Brian T. Winchester

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Insurance Company, dba Auto-Owners
Insurance Company

CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Removal has been served this 24th day of August, 2020 to the following via electronic mail service:

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